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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:) Chapter 13
)
Gregory A. Del Carlo and)
Tracy L. Del Carlo,) Case No. 16-52268 MEH
Debtors.)
) A.P. No. 16-5084
)
)
_____) Date: August 27, 2018
Frank Del Carlo and) Time: 11:00 a.m.
Louis Del Carlo,)
Plaintiffs,)
Vs.)
)
Gregory A. Del Carlo and)
Tracy L. Del Carlo,)
)
Defendants)
_____) /

MOTION TO DISMISS

Debtors move the court to dismiss the above captioned
adversary proceeding brought by plaintiff Louis Del
Carlo ("Louis") pursuant to Rules 7017(a)(3) and 7025(a)(1) of
the Federal Rules of Civil Procedure.

1 The ground for the motion is that Louis passed away on
2 March 20, 2017, and no proper party has been substituted in to
3 take his place in this proceeding.

4 The Motion is based on the Points and Authorities below,
5 and the Declaration filed herewith.

6 POINTS AND AUTHORITIES

7 Bankruptcy Rule 7017 states that Rule 17 F.R.Civ. P.
8 applies in adversary proceedings. Rule 17(a)(1) F.R.Civ.P.
9 states that every action must be prosecuted in the name of the
10 real party in interest, which for a deceased defendant, may be
11 an executor, administrator, or trustee. Rule 7(a)(3) F.R.Civ.P.
12 states that before dismissal, a reasonable time should be given
13 for the real party in interest to be substituted into the
14 proceeding.
15

16 Bankruptcy Rule 7025 states that Rule 25 F.R.Civ.P.
17 applies in adversary proceedings. Rule 25(a)(1) states that
18 "If a party dies...a motion for substitution may be made by any
19 party or by the decedent's successor or representative. If the
20 motion is not made within 90 days after service of a statement
21 noting the death, the action by or against the decedent must be
22 dismissed."

23 Here, Louis' death was noted in connection with his
24 attorney's motion to withdraw (Docket No. 30, filed May 1,
25 2017),

1 that was served on Louis' wife. The order granting the motion
2 to withdraw(Docket No. 35, filed on June 7, 2017), directed
3 that Louis' adversary proceeding be dismissed unless, within 90
4 days of May 1, 2017, a proper party had been substituted in
5 his place.

6 In the main case, on June 15, 2018 as Docket No. 134,
7 debtors filed an objection to Louis' Proof of Claim on the
8 ground that it was not prosecuted by the real party in
9 interest, and, by order entered on July 18, 2018, as Docket No.
10 139, the objection was sustained.

11 More than enough time has passed, and ample notice has
12 been given, yet no proper party has been substituted in.
13

14 CONCLUSION

15 The adversary proceeding by Louis should be dismissed.

16 Dated: 7/24/2018 /s/Stanley Zlotoff